

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: June 23, 2021

CASE: 2021-00100SA & 2021-00103SA

Citation: Harrison v. Toronto Standard Condominium Corporation No. 2714, 2021 ONCAT 55

Order under section 1.47 of the *Condominium Act, 1998*.

Member: Ian Darling, Chair

The Applicant,

Angelo Harrison,

Represented by Ann Marie Marchand, Agent.

The Respondent,

Toronto Standard Condominium Corporation No. 2714

Represented by Kevin Cousins, Agent.

Hearing: Written Online Hearing – April 14, 2021 to June 7, 2021

REASONS FOR DECISION AND ORDER

A. INTRODUCTION

- [1] This Condominium Authority Tribunal (CAT) case deals with a request to enforce Settlement Agreements that were created to resolve two records cases before the CAT. In this decision, I conclude that the Respondent failed to provide two types of records and order the Respondent to provide the records. I also find that the Respondent complied with the remaining elements of the Agreements.
- [2] Settlement agreement cases are different from CAT records cases. In most record cases, the CAT must determine rights and entitlements to requested records, and consequences if records have not been provided. The dispute in this case falls under section 1.47 of the *Condominium Act, 1998* (the “Act”) regarding enforcement of a Settlement Agreement. Since this case is different, I will give some background about how the Agreements are created.
- [3] The parties to a CAT case may agree to settle their dispute and capture the terms in a settlement agreement. This settlement agreement is binding on the parties, and they must comply with it. Sometimes, however, one party may not do so. If

this happens, then a party can file a new case to ask the CAT to issue an order that requires the other party to comply with the agreement.

- [4] In these cases, the CAT must decide whether the Parties have complied with the settlement agreement. If one or both of the parties have not complied with the agreement, the second issue becomes if and how the Tribunal can enforce compliance through an order.
- [5] The Applicant submitted two Settlement Agreement cases at the same time. The CAT proposed that the cases be merged, to which the parties agreed.
- [6] In this hearing the Applicant was represented by their spouse Anne Marie Marchand. The Respondent's condominium manager, Kevin Cousins, represented the Respondent.
- [7] The parties agreed that the issues to be decided in the hearing were:
1. Did the Respondent comply with the settlement agreements?
 2. If not, what order (if any) should the CAT make to remedy the contravention?

B. ISSUES & ANALYSIS

Issue 1: Did the Respondent comply with the settlement agreements?

- [8] This issue has two components. The first is whether the Respondent provided the records; the second question is whether the records that have been provided are adequate.

Settlement Agreement for 2020-00335R

- [9] In case 2020-00335R, the Corporation agreed to provide 10 records (or categories of records). The Applicant stated that the following records (as described in the settlement agreement for this case) were not received:
1. Cancelled Cheque #285 from the Operating Account of TSCC 2714
 2. Unaudited Financial Statements (including bank statements, general ledger) - June, July, August 2020
 3. Cheque payable to Security Management from TSCC 2714
 4. Excel Project Contracts, agreements and/or invoices,
 5. All Security management contracts, agreements and/or invoices.
- [10] The Applicant submitted that the following records (as described in the settlement agreement) were not adequate under section 55(1) of the Act:

1. Proxies accepted for September 21, 2020 Annual General Meeting (AGM)
2. Electronic vote list and count for each issue to be decided by vote at the September 21, 2020 AGM
3. Attendee List for September 21, 2020 AGM
4. Cheque #101 Reserve Fund account
5. Cheque #126 operating account
6. The Corporation will provide the Applicant a separate letter that includes "Toronto Standard Condominium Corporation No. 2714 confirms that a case was brought to the Condominium Authority Tribunal by Angelo Harrison with respect to requests for records. The case was resolved by the parties through mediation".

Settlement Agreement for 2020-00395R

[11] The Respondent provided the following records as requested by the Applicant (and as described in the agreement):

1. Scrutineers' report AGM
2. Minutes - September AGM
3. Performance Audit
4. Unaudited Financial Statements – September 2020 ("including Schedule of Investments, Payable - Aging Summary Payment Summary, Bank Reconciliation (Operating & Reserve Accounts), Utility Logs, and General Ledger")

[12] The agreement also contained a commitment that the Respondent would provide a revised and updated Board's Response to Request for Records Form to reflect that no Board Meeting was held in September 2020, and that the corporation does not have a record called the "Provident Yearly Report of Realised Aggregate Savings of Operation."

[13] Finally, the agreement indicated that the Applicant and the Respondent agree to work together to address future requests for records through respectful and appropriate communication. The Applicant agreed not to make excessive requests, and the Respondent agreed to respond to the Applicant within 30 days, and to provide the Applicant with records they are entitled to.

[14] The Applicant submitted that the Respondent had not met the terms of the agreement on two grounds. First, because the September 2020 unaudited financial statements were incomplete, and second that the rest of the records that were provided were not adequate.

[15] In order to assess compliance with the agreements, I will group specific categories of records across the two agreements.

Cancelled Cheques

[16] The first group of records is the three cancelled cheques. The agreements called for the Respondent to provide copies of three cancelled cheques (#101, 126 and 285). The evidence before me is that the Respondent did not provide the cancelled cheques but did provide the cheque stubs. The Respondent indicated that they did not have the cancelled cheques but provided the stubs as an alternative way to comply with the agreements. The Applicant submitted that this was evidence that the Respondent had not followed the agreement.

[17] The Parties agree that the Respondent was unable to locate the cheques. I find that in these circumstances, the cheque stubs are a reasonable alternative. I further conclude that Respondent's efforts to provide an alternative meets the spirit of the agreement.

[18] I do note that there is no evidence that the Respondent notified the Applicant that they were unable to meet the specific terms of the agreement. Given the lack of communication, I can appreciate that the Applicant feels that the Respondent has not met the terms of the Agreement.

General Ledgers

[19] The agreements stipulated that the Respondent would provide the June, July and August 2020 general ledgers. The parties also agreed that Respondent would provide the September 2020 unaudited financial statements. The Applicant stated that they did not receive the ledgers. The Respondent indicated that they had provided the September 2020 financial statements. Further they stated that the general ledger for September was part of the statements, and that the September ledger included the information for June, July and August. They asserted that in providing the September statements, they fulfilled the agreement.

[20] The Respondent uploaded the September statements as evidence that they had fulfilled the agreement. The version of the September 2020 statements did not include the general ledger. The table of contents for the September 2020 financial statements shows that the general ledger starts on page 19. The document ends at page 18. I conclude from the Respondent's own evidence that the general ledgers have not been provided.

Contracts

- [21] The Applicant indicated that the Respondent did not comply with the Agreement in that some contracts were missing, and others that were provided were inadequate. The Respondent asserted that they had complied with the agreement by providing the records.
- [22] Regarding the “4 Seasons Contract, Agreement and/or Invoices”, the Tribunal considered if the Respondent was required to provide contracts and invoices related to 4 Seasons in a previous decision involving the same Parties¹. The records in that case are the same but cover a different time period than those included in this agreement. The agreement in this case was created before the decision was released in the previous case. The decision in that case established that there was no contract with 4 Seasons. For the purposes of this decision, I will therefore consider only if the invoices were provided.
- [23] The Applicant confirmed that the invoices were provided and asserted that they should have more detail. The Applicant stated that the invoice was not “adequate to provide the details of the work that was performed in each unit. There is a difference between fan coil maintenance and cleaning the fan coil units. There are no corporation minutes to indicate that 4 Seasons was hired or what they were hired for.” As the Tribunal noted in Ravells² “the issue ...is not whether the Applicant finds the record she received sufficient for her purposes but whether the Respondent is keeping adequate records in accordance with s. 55 (1) of the Act.”
- [24] In this case, the Applicant has not demonstrated that the 4 Seasons records are not adequate. The criteria for adequacy may differ depending on the type and purpose of the record in question. It is not typically necessary for an invoice to contain complete descriptions of the work covered by them, especially if there is an accompanying contract or work order or other record that provides the details. While it is fair comment for the Applicant to be concerned as to whether the Respondent has maintained records of some kind - given that it has been admitted that there is no contract - corresponding to the invoice, to be relied on to explain the work covered by it, the invoice itself is not rendered inadequate simply for the lack of those details. I can conclude that the Respondent has complied with the agreement by providing the records listed in the Agreement.
- [25] Regarding the “Excel Project Contracts, Agreements and/or Invoices” – The Applicant stated that the Respondent had not complied with the agreement because they had provided a quote, but no proof that the quote was accepted. The

¹ Harrison v. Toronto Standard Condominium Corporation No. 2714, 2021 ONCAT 30

² Ravells v Metropolitan Toronto Condominium Corporation No. 564, 2020 ONCAT 44

Respondent indicated that they had provided all the records they had available. I keep in mind that when drafting the settlement agreement, the language used by the parties might not be the most accurate to represent their apparent intentions. I conclude that the compilation of "contacts, agreements and/or invoices" was meant to cover any records that are kept by the corporation and represent the arrangements for the Excel Project and the monies paid. Although it is not evident the quote was accepted, and therefore may not qualify as a contract in the condition provided to the Applicant, it appears to be the sum total of the relevant documentation that the Respondent has, and it has provided it to the Applicant. Therefore, I conclude that the Respondent complied with the Agreement. I understand the Applicant's frustration with the records – but the evidence does not support the assertion that the Respondent has not complied with the agreement.

- [26] The agreement referred to a cheque payable to "Security Management from TSCC 2714" it also included "all Security Management Contracts, Agreements and/or Invoices." The Respondent indicated that "all documents related to the two companies have been provided to the Applicant." The Applicant stated that these records were missing. The Respondent asserted that they had provided all the records; however, they did not any evidence that they had, in fact, provided them. During the hearing, the Respondent uploaded evidence to demonstrate that other records were delivered. The Applicant provided contemporaneous emails demonstrating that they advised the Respondent when other records were provided that these specific records were missing. Based on these factors, I conclude that the cheque and security management contracts were not provided.

Records related to the 2020 AGM and Election.

- [27] The agreements included several records related to the 2020 AGM. The Applicant indicated that these records were provided but were not adequate for various reasons.
- [28] The agreements included the minutes from the 2020 AGM. The Respondent provided the minutes but noted that they were in draft form because they had not been approved (as approval would occur at the next year's meeting). The Applicant confirmed receipt of the draft minutes but asserted that they were inadequate because they contained errors. One example specifically related to the dates of Board member resignations. The Respondent stated that the minutes were in draft form, so errors could be corrected before they were approved.
- [29] I conclude that the Respondent has met the terms of the agreement by providing draft minutes. I further conclude that it is unreasonable to conclude that these draft minutes are inadequate. The alleged error does not materially affect the minutes

since they are in draft form. If there are errors, there is an opportunity to correct the minutes before they are approved. The Respondent's decision to disclose draft minutes should be encouraged as a way to promote transparency of condominium records.

[30] The agreements stipulated that the Respondent would provide proxies for the September 21, 2020, AGM, electronic vote lists, attendee list, and the scrutineer's report. I have grouped these records because the meeting was conducted online, and the Respondent used GetQuorum for its AGM and elections. The records in question are reports provided by GetQuorum to the Respondent. Both parties agreed that the records had been provided.

[31] The Applicant stated that the records are inadequate because the records are inaccurate because there was a difference between the information contained in the draft AGM minutes, and these records. By way of example, the Applicant stated:

“The Respondent provided the attendance list with all units and names redacted. The attendance list shows 101 people in attendance. I feel this record is insufficient because section 2.2 of the AGM minutes state - ‘The Chair reported that there was a quorum of Registered Owners in attendance represented by 62 units in person and 94 by proxy totaling 156 Unit Owners.’ Accounting for the 7 non owners at the head table, there is a discrepancy of 31 attendees between what the Chair reported and the list provided by the Respondent. While I understand that there may be more than one unit owner in attendance at the meeting there is no indication that the attendee list was vetted to ensure that only owners qualified per the Act and the corporation's governing documents were allowed to vote for each issue.”

I find that these concerns are not evidence that the records are inadequate. The Applicant is asserting that the records are inadequate for her purposes. There may be differences between the draft minutes and the records from the event. The CAT is not the venue to rectify concerns with draft minutes. The Applicant should address their questions to the condominium corporation before they are approved at the next meeting. For the purposes of this case, I can conclude that the Respondent has complied with the agreements by providing these records.

Letter Confirming Settlement

[32] The Applicant indicated a concern with the letter provided by the Respondent following the resolution of the case. The agreement stated that the corporation will provide the Applicant with a separate letter that includes “Toronto Standard Condominium Corporation No. 2714 confirms that a case was brought to the

Condominium Authority Tribunal by Angelo Harrison with respect to requests for records. The case was resolved by the parties through mediation.” The Applicant indicated that Respondent had not complied with the settlement because the Respondent’s lawyer had written the letter. They assert that it does not satisfy the settlement as the corporation did not provide this document. The Applicant requested the Tribunal order the corporation provide a letter written on corporation letterhead and signed by the directors of the corporation.

[33] I find that the Respondent has complied with the agreement. They provided a letter written on behalf of the corporation. The contents of the letter matched the terms of the agreement. There is no requirement that the letter be on corporate letterhead. The Respondent has complied with the Agreement.

Updated Board Response Form

[34] The agreement contained a stipulation that the corporation would provide an updated Response to Records Request Form. The form was to be reissued to revise the Respondent’s initial Record Response to reflect that there was no board meeting in September 2020, and that the corporation does not have a record of the “Provident Yearly Report of Realized Aggregate Savings of Operation.”

Both parties agree that these records do not exist. The Respondent did not provide an updated form. I find that they have not strictly met the terms of the agreement. However, I decline to order the Respondent to issue a new response form. The response form communicates the corporation’s response to an owner’s Request for Records at the time of the response. The purpose of reissuing the form was to formally recognize that the two records do not exist. Based on the evidence provided during this hearing, I conclude that there was no board meeting in September 2020 and therefore no minutes exist. I further conclude that there is no record of the “Provident Yearly Report of Realized Aggregate Savings of Operation.” This decision affirms that the records do not exist. Given my finding on this point, there is no purpose served by requiring the Respondent to re-issue its response at this time.

Performance Audits

[35] The Applicant submitted that the Respondent did not comply with the agreement because they provided two different versions of the performance audit. The Applicant asserted that the performance audit was not adequate because the document, dated March 20, 2020, was not accompanied by a separate written document that is addressed to the requester and that clearly identifies the record as a draft. The Applicant’s concern was that the Respondent delivered a second

Performance Audit dated April 1, 2020. The Respondent did not provide an explanation as to why this document was provided and how it was different from the first document.

- [36] The Respondent stated that a draft of the performance audit was submitted to the Applicant pursuant to the agreement. The Respondent indicated that after they had delivered the draft audit, the Applicant called to notify that they had not received the final version. The Respondent subsequently sent an email with the final version to the Applicant. They also stated that the “Draft” and “Approved” document are substantially the same document.
- [37] I have reviewed both documents. They are dated March 20, 2020 and April 1, 2020. The March document clearly states “draft” on each page. The April version includes the engineer’s stamp and signature. I conclude that although the differences between the documents are minor, the “draft” version of the report is not the record referred to in the agreement, since it referred to the performance audit. The Respondent did not provide the final report on time but did provide it via email during the hearing.
- [38] Regarding the Applicant’s assertions that the audit did not comply with the accompanying statement provisions of section 13.8(1) of Ontario Regulation 48/01 (the “Regulation”). The regulation states that:

Each copy of a record that the corporation makes available for examination or delivers under any of sections 13.4 to 13.7 shall be accompanied by ...(a) a separate written document that is addressed to the requester and that clearly identifies the record that is being made available or delivered...

The Tribunal has previously³ found that an email satisfied the requirement in s. 13.8(1)(a) the Regulation and was a separate written document that is addressed to the requester. I adopt this interpretation and find that an email may satisfy this requirement. The April version was sent via email to the Applicant.

- [39] Regarding the assertion that the accompanying statements were not provided for the draft audit, the facts in the case show that the draft version of the audit was uploaded to the Tribunal CAT-ODR system after the agreement was completed, but before the case was closed. The purpose of the accompanying statements is to clearly identify the records, the reason for any redactions and the costs for the production of the records. In these unique circumstances, I find that it is not

³ Chapman v. Toronto Standard Condominium Corporation No. 1611, 2020 ONCAT 40 and Chai v. Toronto Standard Condominium Corporation No. 2431, 2019 ONCAT 45.

necessary to provide the accompanying statements as the record was uploaded to meet the terms of the agreement.

[40] I do not find the assertion that the records are inadequate, or that the Respondent has not complied with the Regulation, compelling. It appears the Applicant is asserting that the Respondent has not met technical requirements of the Regulation to prove non-compliance with the agreement. The facts of the case show that the Respondent provided the draft audit, then upon discovering that they had sent a draft version, provided the final version. I find that the Respondent substantially complied with the agreement.

Issue 2: If the Respondent did not comply, what order (if any) should the CAT make to remedy the contravention?

[41] Under section 1.47(6) of the Act, if the Tribunal determines that a party has contravened the settlement, the Tribunal may make an order that it considers appropriate to remedy the contravention. I have found that the Respondent did not provide the general ledgers for June, July, August. Additionally, the general ledger was missing from the September 2020 financial statements. The remedy for this is to order that the Respondent provide the missing records.

[42] I also concluded that the Respondent did not provide a cheque payable to “Security Management from TSCC 2714” and “all Security Management Contracts, Agreements and/or Invoices.” The remedy is that the Respondent should provide these records.

[43] The Applicant requested a penalty be awarded against the Respondent. The relevant section of the [Act](#) relating to penalties is [s.1.44 \(1\)](#) 6. It states that the Tribunal may order the Respondent:

to pay a penalty that the Tribunal considers appropriate to the person entitled to examine or obtain copies ... if the Tribunal considers that the corporation has without reasonable excuse refused to permit the person to examine or obtain copies under that subsection.

[44] Under s. 1.44 (3), the Tribunal has authority to award a penalty of up to \$5000. The questions for me to consider are whether the Respondent refused to provide the requested records to the Applicant, and, if so, was there a reasonable excuse for such refusal. If I determine a penalty is justified, the next question is to decide the appropriate amount that should be paid.

[45] Although I have found that the Respondent failed to fully comply with the agreements, after reviewing the submissions and evidence, I conclude that the

Respondent made a genuine effort to meet the agreed terms. The facts and evidence lead me to conclude that the Respondent did not refuse to provide the records. Since I have concluded that the Respondent did not refuse to provide the records without reasonable excuse, there is no basis for a penalty.

- [46] Rule 45.2 of the CAT's Rules of Practice states that if a case is not resolved by Settlement Agreement or Consent Order and a CAT Member makes a final Decision, the unsuccessful User will be required to pay the successful User's CAT fees and reasonable dispute-related expenses, unless the CAT member decides otherwise. In this case, the Applicant paid \$125 to submit each case, and were partly successful. Accordingly, I order the Respondent to reimburse the Applicant \$250 for their CAT fees.

C. CONCLUSION

- [47] I have concluded that the Respondent has complied with most elements of the settlement agreements. However, the Respondent did not fully comply, and bears some responsibility for the case before me by agreeing to provide records that do not exist, not communicating about the cheque stubs, and sending a draft version of the performance audit. As a result of these errors, the Applicant felt it necessary to file this case.
- [48] It is clear to me that the Applicant has a genuine interest in ensuring the condo is managed properly. It is also clear to me that the volume of the requests made it difficult for the Respondent to reply in a timely manner. In deciding this case it was difficult to separate the legitimate requests for undelivered records from the unfounded concerns about the adequacy of records.
- [49] I note that several of the Applicant's arguments around the adequacy of the records echo the issues identified in the Ravells decision where the tribunal articulated that the adequacy of a record is not whether the Applicant finds it sufficient for their own purposes but whether the Respondent is keeping adequate records in accordance with s. 55 (1) of the Act. It appears that the Applicant has raised adequacy issues as a way of framing areas where they question or disagree with decisions the board has made in managing the affairs of the corporation. At some point, the Applicant's request for records has morphed into efforts to influence how the corporation is managed. The jurisdiction of the Tribunal with respect to records is not intended as a means to supplant the decisions of the board.
- [50] One final observation: one of the agreements contained the following settlement term, "The Applicant and the Respondent agree to work together to address future

requests for records through respectful and appropriate communication. The Applicant agrees not to make excessive requests, and the Respondent agrees to respond to the Applicant within 30 days, and to provide the Applicant with records they are entitled to.” Though it is somewhat unusual to see in a Settlement Agreement, this term reflects the objective of having the parties work together to resolve the requests in a productive way, without needing the intervention of the Tribunal. I encourage the parties to embrace the spirit of this clause.

D. ORDER

[51] The Tribunal orders that:

1. The Respondent must deliver the following records electronically to the Applicant within 30 days of this decision:
 - a. The June, July, August, and September 2020 General Ledgers.
 - b. Cheque payable to “Security Management from TSCC 2714”
 - c. “All Security Management Contracts, Agreements and/or Invoices.” The remedy is that the Respondent should provide these records.
2. The Respondent is not entitled to charge a fee for the production of the records.
3. The Respondent to reimburse the Applicant \$250 for their CAT fees within 30 days of this decision.

Ian Darling
Chair, Condominium Authority Tribunal

Released on: June 23, 2021